



# Nevada State Board of Medical Examiners

## **\* \* \* M I N U T E S \* \* \***

### **OPEN SESSION BOARD MEETING NEVADA STATE BOARD OF MEDICAL EXAMINERS**

**Embassy Suites Hotel**

**4315 Swenson Street**

**Las Vegas, Nevada 89119**

***FRIDAY, MARCH 7, 2003 - 9:30 a.m.***

***and***

***SATURDAY, MARCH 8, 2003 - 8:30 a.m.***

#### **FRIDAY, MARCH 8, 2003**

##### **MEMBERS PRESENT:**

Cheryl A. Hug-English, M.D., President  
Jaculine C. Jones, Ed.D., Vice President  
Paul A. Stewart, M.D., Secretary-Treasurer  
Joel N. Lubritz, M.D.  
Donald H. Baepler, Ph.D., D.Sc.  
Robin L. Titus, M.D.  
Marlene J. Kirch  
Stephen K. Montoya, M.D.  
Sohail U. Anjum, M.D.

##### **STAFF PRESENT:**

Larry D. Lessly, J.D., Executive Director/Special Counsel  
Maureen E. Lyons, Deputy Executive Director  
Richard J. Legarza, J.D., General Counsel  
Kasey M. Miller, Administrative Assistant to Executive Director  
Helen J. Teeple, Financial Support Assistant

##### **ALSO PRESENT:**

Charlotte M. Bible, J.D., Chief Deputy Attorney General  
John B. Lanzillotta, P.A.-C, Physician Assistant Advisory Committee  
Member  
Donald W. Wright, R.R.T., Practitioner of Respiratory Care Advisory  
Committee Member  
Michael J. Garcia, R.R.T., Practitioner of Respiratory Care Advisory  
Committee Member  
Lee Smith, M.D., Member of the Board of Directors, Federation of State  
Medical Boards of the United States, Inc.  
Carol R. Bowers, R.N., C.D., Executive Director, Nevada Health  
Professionals Assistance Foundation  
F. Victor Rueckl, Jr., M.D., Medical Director, Nevada Health  
Professionals Assistance Foundation

### AGENDA ITEM 1

Call to Order - Cheryl A. Hug-English, M.D., President

The meeting was called to order by Cheryl A. Hug-English, M.D., President, at 9:30 a.m.

Dr. Hug-English welcomed everyone in the audience and recognized medical students, representatives from the Practitioner of Respiratory Care Advisory Committee, and Dr. Lee Smith, Member of the Board of Directors of the Federation of State Medical Boards of the United States, Inc.

### AGENDA ITEM 2

Approval of Minutes

- December 6 & 7, 2002 Board Meeting - Open/Closed Sessions

Dr. Titus moved to accept the minutes of the December 6 & 7, 2002 Board Meeting - Open/Closed Sessions. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

### AGENDA ITEM 3

Request from Keith W. Macdonald, Executive Secretary of the Nevada State Board of Pharmacy for Consideration of Making a Patron Donation in the Amount of \$10,000.00 to the Nevadans for Antibiotic Awareness Program

- William P. Berliner, M.D., Nevadans for Antibiotic Awareness

Mr. Lessly distributed material concerning the Nevadans for Antibiotic Awareness Program he received from Dr. Berliner, who was not able to attend the meeting, and reviewed the material for members. Discussion ensued about the program. Consensus was that this is a good, worthwhile program. Dr. Titus questioned the program's budget and Dr. Berliner's request for \$10,000 from the board. She expressed her interest in knowing what percentage of the program's monies would the \$10,000 encompass and whether this would be a one-time request. Dr. Hug-English requested a motion to table this agenda item until the board receives more information about the program's budget. Mrs. Kirch moved to table this agenda item until the next board meeting, Dr. Montoya seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

### AGENDA ITEM 4

Request from Lisa Robin, Assistant Vice President, Leadership and Legislative Services, Federation of State Medical Boards of the United States, Inc. for Consideration of Making a Donation to Help Sponsor a Program to be Held at the Federation of State Medical Boards of the United States, Inc.'s Annual Meeting

Mr. Lessly reported that the Federation of State Medical Boards of the United States, Inc. is requesting funding from its member boards for an educational program to be held at the Federation's Annual Meeting. He reminded members that the Federation provides many services and educational programs to its member boards at no cost and

recommended that the board donate the \$5,000 as requested to help sponsor the program. Dr. Lubritz moved to approve donating \$5,000 to the Federation of State Medical Boards of the United States, Inc. to help sponsor its program per the Federation's request. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

#### AGENDA ITEM 5

##### Presentation by University of Nevada School of Medicine Students Re: the Clinical Skills Examination Component of the United States Medical Licensing Examination

Cheryl Nelson, MSI, Eric Guglielmo, MSII, and Anthony Echo, MSII appeared before the board to request its consideration of excluding the Clinical Skills Examination Component of the USMLE as a requirement for medical licensure in Nevada. They presented their argument for the exclusion of the Clinical Skills Component and requested that the board vote against its implementation at the annual meeting of the Federation of State Medical Boards of the United States, Inc. in April. They also requested that the board introduce a resolution at the Federation's annual meeting to allow discussion and a delegate vote on the implementation of the Clinical Skills Exam. Dr. Hug-English thanked the presenters for a very thorough and clear presentation of their position on the matter.

#### AGENDA ITEM 6

##### Consideration of Request by Washoe Medical Center for Approval of Five Practitioner of Respiratory Care Training Programs Per NRS 630.047(1)(e) and (f)(1)

#### AGENDA ITEM 7

##### Consideration of Request by Steven Kessinger, C.C.R.T. for Approval of Medical Education Collaborative's Practitioner of Respiratory Care Training Programs Per NRS 630.047(1)(e) and (f)(1)

Dr. Baepler moved to accept the request by Washoe Medical Center for approval of five practitioner of respiratory care training programs per NRS 630.047(1)(e) and (f)(1) and the request for approval of Medical Education Collaborative's practitioner of respiratory care training programs per NRS 630.047(1)(e) and (f)(1). Dr. Stewart seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

#### AGENDA ITEM 8

##### Consideration of Proposed Board Advisory Opinion Re: "Student" Practitioners of Respiratory Care - Richard J. Legarza, J.D., General Counsel

Mr. Legarza reported that he researched the issue of "student" practitioners of respiratory care, and spoke with the Board's Practitioner of Respiratory Care Advisory Committee members, Dr. Stewart, and others, to draft this opinion. Mr. Legarza stated that he feels the opinion clarifies the issue, and will help solve the problems that have existed in the past. Mr. Garcia stated that he also thought the opinion would be very helpful to clear up any current confusion. Dr. Jones moved to approve the advisory opinion as proposed by Mr. Legarza. Dr. Stewart seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

## AGENDA ITEM 9

### Reports

- Diversion Program: *Quarterly Report* - Carol R. Bowers, R.N., C.D., Executive Director, Nevada Health Professionals Assistance Foundation
    - Consideration of Renewal of Board's Contract with the Nevada Health Professionals Assistance Foundation to Manage Board's Diversion Program Effective April 1, 2003
  - Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C
  - Practitioner of Respiratory Care Advisory Committee - Michael J. Garcia, R.R.T.
  - Investigative Committee - Paul A. Stewart, M.D., Chairperson
  - Secretary-Treasurer - Paul A. Stewart, M.D., Secretary-Treasurer
  - Federation of State Medical Boards of the United States, Inc. 2003 Workshop *State Regulatory Policies: Responding to Changes in the Oversight of Opioid Addiction Treatment* - Jaculine C. Jones, Ed.D., Vice President
  - Committee to Study Post-Licensure Continuing Competency Evaluation - Committee Members: Donald H. Baepler, Ph.D., D.Sc.; Arne D. Rosencrantz; Paul A. Stewart, M.D.; Stephen K. Montoya, M.D. and Joel N. Lubritz, M.D.
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- **Diversion Program: *Quarterly Report* - Carol R. Bowers, R.N., C.D., Executive Director, Nevada Health Professionals Assistance Foundation**
    - **Consideration of Renewal of Board's Contract with the Nevada Health Professionals Assistance Foundation to Manage Board's Diversion Program Effective April 1, 2003**

Ms. Bowers reviewed the previously distributed Diversion Program's Annual Report for members. She announced that the program has had a record year for program participation. She advised that Dr. Rueckl has been making presentations concerning the "disruptive physician" at various hospitals upon request. She stated that the program is doing very well, she is excited about how it is going, and she feels very good about the program's progress during the last three years. Discussion ensued concerning current financial funding being received by the Foundation and how the funds are being utilized. Dr. Stewart moved to approve the Nevada Health Professionals Assistance Foundation's two year contract at \$110,000 per year beginning April 1, 2003. Ms. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

### **- Practitioner of Respiratory Care Advisory Committee - Michael J. Garcia, R.R.T.**

Mr. Garcia thanked the board for its assistance in approving the Advisory Opinion regarding Student Practitioners of Respiratory Care. He informed the board that there is a new pharmacy law that effects Student Practitioners of Respiratory Care. He stated that these students are not on the list of healthcare professionals who can administer medications. He advised that the Nevada Respiratory Care Association will be working to amend this law with the Community College, hospitals, and the Nevada State Board of Pharmacy, and that he hopes it will be resolved at this legislative session.

**- Investigative Committee - Paul A. Stewart, M.D., Chairperson**

Dr. Stewart distributed the list of cases recommended for closure by the committee for members' review and consideration for closure.

Dr. Stewart informed the board that the investigative committee is making good progress on their cases, but is having some problems finding an adequate number of peer reviewers at opposite ends of the state to review cases outside of their practice area. He advised that the committee is currently looking for forty peer reviewers for forty cases that are currently under investigation. Discussion ensued, and it was decided that the investigative committee would send out a mailing to all licensed M.D.s asking for their help with the peer review situation.

Dr. Stewart discussed the reporting requirements of AB1 from the special legislative session held in the summer of 2002. In the board's January newsletter, the board asked all M.D.s to notify the board of any malpractice cases in which they were involved during the previous quarter. In February, the board received a list of malpractice cases filed in Clark County from October 1, 2002 to present, and so far, the investigative staff has found sixty-two to seventy-two M.D.s who didn't report to the board. Dr. Stewart advised that the Investigative Committee will send a letter to all of the M.D.s who didn't report their malpractice cases to the board, giving them a time frame within which to respond, and asking them why they didn't report to the board and why they shouldn't be prosecuted for not having done so. The investigative staff will do the same investigation for Washoe County and the rest of the state. This project will take at least 1,000 work hours to complete. By consensus, the board decided that in the mailing to the M.D.s, a letter will be included reminding them of the malpractice reporting requirement, per AB1.

**- Secretary-Treasurer - Paul A. Stewart, M.D., Secretary-Treasurer**

Dr. Stewart reviewed the previously distributed budget and balance sheets as of July, 2002 through June, 2003 for members, and suggested that it is time for the board to consider investing in the purchase of items necessary for the continuing function of the board. He added that the board's current financial situation is good.

**- Investigative Committee - Paul A. Stewart, M.D., Chairperson (CONTINUED)**

Dr. Titus asked for further discussion of the problems the Investigative Committee is having in finding peer reviewers and the adequate reporting by M.D.s of their malpractice cases. Discussion ensued, with consensus of the board being that the mass mailing to all licensed M.D.s should help with these situations.

Dr. Havins, Executive Director of the Clark County Medical Society appeared before the board and spoke on the statistical information that the Medical Society has gathered about M.D.s leaving Nevada due to the current malpractice crisis. Discussion ensued. Dr. Hug-English requested that the Clark County Medical Society provide the board with its information regarding the malpractice situation, so that the board can use the information for its own investigation of this matter.

Dr. Lubritz moved to close the cases recommended for closure by the Investigative Committee. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Federation of State Medical Boards of the United States, Inc. 2003 Workshop  
*State Regulatory Policies: Responding to Changes in the Oversight of Opioid  
Addiction Treatment* - Jaculine C. Jones, Ed.D., Vice President**

Dr. Jones reported on the Federation of State Medical Boards of the United States, Inc.'s workshop she attended with respect to responding to changes in the oversight of Opioid addiction treatment. Dr. Jones felt that the workshop was very well done and very informative. She added that the board should soon be receiving a videotape of the program.

**- Committee to Study Post-Licensure Continuing Competency Evaluation -  
Committee Members: Donald H. Baepler, Ph.D., D.Sc.; Arne D. Rosencrantz;  
Paul A. Stewart, M.D.; Stephen K. Montoya, M.D. and Joel N. Lubritz, M.D.**

Dr. Baepler gave a brief history of the committee's work to date and reminded members that the committee has been working on this project for the past three years. He referred to the proposed regulation for requirements for biennial registration as they appear in the agenda book and stated that the committee is looking for input from the medical community regarding the proposed regulation. Dr. Baepler reviewed the verbiage of the proposed regulation, and suggested that the board hold public workshops on this proposed regulation. Discussion ensued.

Dr. Titus expressed her concern about sending this document out to hearing in the form as it appears in the agenda book. She suggested some changes, specifically concerning the rural M.D.s, stating that she feels rural M.D.s should meet the same standards as all other Nevada licensed M.D.s.

Dr. Hug-English suggested that some changes be made regarding the hospital cases, as most practice is performed on an out-patient basis.

Mr. Lessly suggested eliminating paragraph four and amending paragraph three.

Mrs. Kirch stated that she feels that the board needs to inform the public of how this legislation will effect both the citizens of Nevada and the M.D.s in Nevada, with respect to their competency.

Dr. Hug-English directed that this agenda item be continued after lunch. She asked that the Committee members meet during the lunch hour to make revisions, as discussed, and present the revised proposed regulation for consideration after the lunch hour.

### RECESS

Dr. Hug-English recessed the meeting at 1:00 p.m.

Dr. Hug-English reconvened the meeting at 2:00 p.m.

**- Committee to Study Post-Licensure Continuing Competency Evaluation –  
Committee Members: Donald H. Baepler, Ph.D., D.Sc.; Arne D. Rosencrantz;  
Paul A. Stewart, M.D.; Stephen K. Montoya, M.D. and Joel N. Lubritz, M.D.  
(CONTINUED)**

Mr. Lessly reviewed for members the revisions made to the proposed regulation by the Committee during the lunch break for consideration. Dr. Titus moved to approve the revised proposed regulations on post licensure continuing competency evaluation for public workshops. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler informed the board that Mr. Lessly will meet with Mrs. Kirch regarding a public information notice to be a part of the workshop postings to educate the public on the proposed regulations.

Dr. Hug-English thanked the committee for its work on this difficult issue and stated that this document is a good start toward accomplishing the committee's goal.

### **- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C**

Mr. Lanzillotta reported that the Nevada State Board of Medical Examiners was commended on a national level by the American Academy of Physician Assistants in its January newsletter for adopting new regulations with regard to M.D. and P.A. relationships, initial licensing for P.A.s, and the removal of the supervising physician fee. He informed members that the National Commission on Certification of Physician Assistants (NCCPA) has revised its disciplinary policy, which now provides for the denial or revocation of NCCPA certification if a P.A.'s license is revoked by any state.

**AGENDA ITEM 11**

**Executive Staff Reports** - Larry D. Lessly, J.D., Executive Director

Maureen E. Lyons, Deputy Executive Director

- Consideration of Request for Staff Attendance at Educational Meetings
- Consideration of Continuation of Contract with Nevada Broadcaster's Association for the Board's Public Service Announcement Program for April 1, 2003 through June 30, 2003
- Consideration of Amending Office Lease to Add Storage Space and to Extend Lease for Office and Storage Space
- Consideration of Adding an Investigator Position and an Administrative Assistant Position to Staff
- Informational Items

**- Consideration of Request for Staff Attendance at Educational Meetings**

Mr. Lessly reported that he did not have any requests for staff attendance at any educational meetings. He advised that Dr. Stewart, Dr. Hug-English, Dr. Jones, and Dr. Baepler are registered for the Federation of State Medical Boards of the United States, Inc.'s Annual Meeting to be held in Chicago in April.

**- Consideration of Continuation of Contract with Nevada Broadcaster's Association for the Board's Public Service Announcement Program for April 1, 2003 through June 30, 2003**

Mr. Lessly recommended that the board renew its contract with the Nevada Broadcaster's Association for the board's public service announcement program for April 1, 2003 through June 30, 2003 at \$5,000 per month. Dr. Jones moved to approve continuing the contract as recommended by Mr. Lessly. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Consideration of Adding an Investigator Position and an Administrative Assistant Position to Staff**

Mr. Lessly requested the board's approval to add an Investigator position and an Administrative Assistant position to the investigative staff due to the increased case load and difficulty in the processing of the investigative cases. Dr. Baepler moved to approve the addition of an Investigator position and an Administrative Assistant position to the investigative staff. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Consideration of Amending Office Lease to Add Storage Space and to Extend Lease for Office and Storage Space**

Mr. Lessly requested board approval of an amendment of the current board lease to add storage space, and to extend the lease through March 2009 for the office and additional storage space. This change will also open up space for the two investigative positions to be added to the staff.

Dr. Stewart raised the possibility that a future board might consider purchasing a building once the new six year lease expires. Mr. Lessly added that by purchasing a building, overhead costs would be reduced, especially if the board were able to rent space to other state boards.

Dr. Lubritz moved to approve the amendment to the board office lease as proposed by Mr. Lessly. Dr. Stewart seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Informational Items**

Mrs. Lyons reported that the board will be “going live” with the new version of License 2000 on Monday March 10, 2003. She advised that the upgrade project ran very smoothly and the software company’s implementation procedure has greatly improved since the board’s last project with the company.

**AGENDA ITEM 12**

**Consideration of Stipulation for Settlement in the Matter of the Nevada State Board of Medical Examiners vs. Robert Peter Selkin, M.D., Case No. 02-18562-1**

Adjudicating Board Members: Cheryl A. Hug-English, President; Jaculine C. Jones, Ed.D., Vice President; Joel N. Lubritz, M.D.; Robin L. Titus, M.D.; Marlene J. Kirch; and Sohail U. Anjum, M.D.

Dr. Hug-English confirmed that all of the adjudicating board members were present.

Mr. Legarza reviewed the history of the formal Complaint filed by the board against Dr. Selkin and reviewed and explained the points of the proposed Stipulation for Settlement in the matter. Discussion ensued.

Mrs. Kirch moved to accept the proposed Stipulation for Settlement in the matter of the Nevada State Board of Medical Examiners vs. Robert Peter Selkin, M.D. as presented by Mr. Legarza. Dr. Titus seconded the motion, and Dr. Hug-English took a roll call for the vote. All adjudicating board members voted in favor of accepting the proposed Stipulation for Settlement. The Stipulation for Settlement in the matter of the Nevada State Board of Medical Examiners vs. Robert Peter Selkin, M.D. was accepted unanimously, with the Chair voting in favor.

AGENDA ITEM 13

Adjudication in the Matter of the Nevada State Board of Medical Examiners vs. Lambert R. Abeyatunge, M.D., Case No. 02-10879-1

Adjudicating Board Members: Cheryl A. Hug-English, President; Jacqueline C. Jones, Ed.D., Vice President; Joel N. Lubritz, M.D.; Robin L. Titus, M.D.; Marlene J. Kirch; and Sohail U. Anjum, M.D.

Dr. Hug-English confirmed that all of the adjudicating board members were present and proceeded to review the formal Complaint filed by the board against Dr. Abeyatunge.

Dr. Lubritz motioned to go into Closed Session to deliberate on the counts of the Complaint. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor.

Upon returning to Open Session, Dr. Lubritz moved to find Dr. Abeyatunge guilty of malpractice on count one of the Complaint, based on evidence that the standard of care was not met prior to the surgery by his not marking the surgical site. Dr. Jones seconded the motion, and Dr. Hug-English took a roll call for the vote. All adjudicating board members voted in favor of finding Dr. Abeytunge guilty of malpractice on count one of the Complaint, and the motion passed unanimously, with the Chair voting in favor of the motion.

Dr. Anjum moved to find Dr. Abeyatunge not guilty of count two of the Complaint, intending to deceive, based on evidence that Dr. Abeyatunge documented that he had informed the patient and prison care doctor of the medical situation. Dr. Titus seconded the motion and Dr. Hug-English took a roll call for the vote. All adjudicating board members voted in favor of finding Dr. Abeytunge not guilty of intending to deceive on count two of the Complaint, except Dr. Jones and Mrs Kirch, who voted against the motion. The motion passed, with the Chair voting in favor of the motion.

Dr. Lubritz moved to go into Closed Session to deliberate on the appropriate sanctions. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor.

Upon returning to Open Session, Dr. Titus moved that Dr. Abeyatunge receive a public reprimand, pay a \$2,000 fine, pay all costs incurred by the board in the investigation and prosecution of the case, and that he successfully complete an additional 10 hours of Continuing Medical Education to be approved in advance by the Secretary-Treasurer of the board. Mrs. Kirch seconded the motion, and Dr. Hug-English took a roll call for the vote. All adjudicating board members voted in favor of the sanctions to be imposed on Dr. Abeyatunge, and the motion passed unanimously, with the Chair voting in favor of the motion.

Mrs. Bible provided the board with a waiver form to be filed into the meeting record regarding Dr. Abeyatunge.

AGENDA ITEM 14

Adjudication in the Matter of the Nevada State Board of Medical Examiners vs. Elliott D. Schmerler, M.D., Case No. 02-9279-1

Adjudicating Board Members: Cheryl A. Hug-English, President; Jacqueline C. Jones, Ed.D., Vice President; Joel N. Lubritz, M.D.; Robin L. Titus, M.D.; Marlene J. Kirch; and Sohail U. Anjum, M.D.

Dr. Hug-English confirmed that all of the adjudicating board members were present and proceeded to review the formal Complaint filed against Dr. Schmerler.

Mrs. Bible provided the board with a waiver form to be filed into the meeting record regarding Dr. Schmerler.

Dr. Titus moved to find Dr. Schmerler guilty of count one in the formal Complaint, conviction of a felony under the laws of the United States of America. Mrs. Kirch seconded the motion, and Dr. Hug-English took a roll call vote. All adjudicating board members voted to find Dr. Schmerler guilty of conviction of a felony, count one of the formal Complaint, and the Chair voted in favor of the motion.

Mrs. Kirch moved to find Dr. Schmerler guilty of count two of the formal Complaint, which involved moral turpitude. Dr. Jones seconded the motion, and Dr. Hug-English took a roll call vote. All adjudicating board members voted to find Dr. Schmerler guilty of moral turpitude, count two of the formal Complaint, and the Chair voted in favor of the motion.

Dr. Titus moved to go into Closed Session for deliberation of the appropriate sanctions. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Upon returning to Open Session Dr. Anjum moved to revoke Dr. Schmerler's license to practice medicine in the state of Nevada, order that he pay a \$5,000 fine per each of the two counts of the Complaint, and pay all costs incurred by the board in the investigation and prosecution of the case. Mrs. Kirch seconded the motion and Dr. Hug-English took a roll call vote. All adjudicating board members voted in favor of the sanctions to be imposed on Dr. Schmerler, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Hug-English stated her feeling that Dr. Schmerler's actions were deplorable, his history and felony conviction is a disgrace to the practice of medicine and the revocation is appropriate.

AGENDA ITEM 15

Adjudication in the Matter of the Nevada State Board of Medical Examiners vs. Jeffrey Stein, M.D., Case No. 03-12784-1

Adjudicating Board Members: Cheryl A. Hug-English, President; Jaculine C. Jones, Ed.D., Vice President; Joel N. Lubritz, M.D.; Marlene J. Kirch; Sohail U. Anjum, M.D.; and Stephen K. Montoya, M.D.

Mrs. Bible provided the board with a waiver form to be filed into the meeting record regarding Dr. Stein.

Dr. Hug-English confirmed that all of the adjudicating board members were present and proceeded to review the formal Complaint filed against Dr. Stein.

Mrs. Kirch moved to go into Closed Session to deliberate on Dr. Stein's guilt or innocence. Dr. Montoya seconded the motion and it passed unanimously, with the Chair voting in favor of the motion.

Upon returning to Open Session, Dr. Montoya moved to find Dr. Stein guilty of providing inaccurate statements as described in count one of the formal Complaint, attempting to obtain a license by fraud, misrepresentation or false, misleading or inaccurate statements. The motion died for lack of a second.

Mrs. Kirch moved to find Dr. Stein guilty of fraud as described in count one of the formal Complaint. Dr. Jones seconded the motion.

Dr. Anjum moved to amend the motion to find Dr. Stein guilty of count one of the formal Complaint, as he felt that Dr. Stein's intention wasn't fraud but rather misrepresentation, misleading, or inaccurate statements. Dr. Montoya seconded the motion, and Dr. Hug-English took a roll call vote. Dr. Jones, Dr. Lubritz, and Mrs. Kirch voted against the motion and the amended motion failed, with the Chair voting against the amended motion.

Dr. Hug-English took a roll call vote on the original motion by Mrs. Kirch to find Dr. Stein guilty of fraud on count one of the formal Complaint. The motion was seconded by Dr. Jones. All adjudicating board members voted in favor of the motion, except Dr. Anjum and Dr. Montoya who voted against the motion. The motion passed, with the Chair voting in favor of the motion.

Mrs. Kirch moved to find Dr. Stein guilty of conduct intending to deceive as described in count two of the formal Complaint. Dr. Jones seconded the motion, and Dr. Hug-English took a roll call vote. All adjudicating board members voted in favor of the motion except, Dr. Anjum and Dr. Montoya who voted against the motion. The motion passed, with the Chair voting in favor of the motion.

Dr. Lubritz moved to go into Closed Session to deliberate on the appropriate sanctions. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Upon returning to Open Session, Dr. Montoya moved that Dr. Stein be issued a public reprimand, pay a \$2,000 fine for each of the two counts of the Complaint, pay the costs incurred by the board in the investigation and prosecution of the case, and attend six hours of Continuing Medical Education in Medical Ethics within the next year. Mrs. Kirch seconded the motion.

Dr. Montoya amended the motion to add that the Continuing Medical Education must be approved in advance by the Secretary-Treasurer of the Board. Mrs. Kirch seconded the amended motion, and Dr. Hug-English took a roll call vote. All adjudicating board members voted in favor of the motion, and it passed unanimously, with the Chair voting in favor of the motion.

## RECESS

Dr. Hug-English recessed the meeting at 3:45 p.m.

**SATURDAY, DECEMBER 7, 2002**

**MEMBERS PRESENT:**

Cheryl A. Hug-English, M.D., President  
Jaculine C. Jones, Ed.D., Vice President  
Paul A. Stewart, M.D., Secretary-Treasurer  
Joel N. Lubritz, M.D.  
Donald H. Baepler, Ph.D., D.Sc.  
Robin L. Titus, M.D.  
Marlene J. Kirch  
Sohail U. Anjum, M.D.  
Stephen K. Montoya, M.D.

**STAFF PRESENT:**

Larry D. Lessly, J.D., Executive Director  
Maureen E. Lyons, Deputy Executive Director  
Richard J. Legarza, J.D., General Counsel  
Kasey M. Miller, Administrative Assistant to Executive  
Director  
Helena J. Teeples, Financial Support Assistant

**ALSO PRESENT:**

Charlotte M. Bible, J.D., Assistant Chief Deputy Attorney  
General  
John B. Lanzillotta, P.A.-C, Physician Assistant Advisory  
Committee Member  
Carol A. Clothier, Assistant Vice President, Examination  
and Post-Licensure Assessment Services, Federation of  
State Medical Boards of the United States, Inc.  
Lee Smith, MD., Member of the Board of Directors,  
Federation of State Medical Boards of the United States,  
Inc.

Cheryl A. Hug-English, M.D., President, reconvened the meeting  
at 8:30 a.m.

**AGENDA ITEM 16**

**Presentation by the Federation of State Medical Boards of the United States, Inc.**

Ms. Clothier and Dr. Smith presented an overall view of the Federation of State Medical Boards of the United States, Inc. and its services. Ms. Clothier also presented information pertaining to upcoming programs the FSMB hopes to implement in the future. Ms. Clothier and Dr. Smith answered questions for members. Discussion ensued.

Dr. Smith stated that the Nevada State Board of Medical Examiners was one of the most progressive medical boards in the United States and ranked in the top twenty-five percent of medical boards. Dr. Lubritz asked that Dr. Smith's statements about the Nevada State Board of Medical Examiners be recorded in the minutes.

#### AGENDA ITEM 10

Legal Reports - Richard J. Legarza, J.D., General Counsel

Charlotte M. Bible, J.D., Assistant Chief Deputy Attorney General

- Board Ordered Terms, Conditions and Probation Status
- Board Litigation Status

#### **- Board Ordered Terms, Conditions and Probation Status -**

Mr. Legarza reported that all board orders are current and there are no violations.

#### **- Board Litigation Status**

Mrs. Bible reported that there are currently no litigation cases pending. Mr. Legarza reported that the Murray case is still under advisement in Reno and it is not moving.

#### AGENDA ITEM 17

Appearances for Consideration of Acceptance of Applications for Licensure

Dr. Jones moved to go into Closed Session to discuss the character and professional competence of applicants for licensure approval. Dr. Titus seconded the motion, and it passed unanimously with the Chair voting in favor.

#### **CLOSED SESSION**

##### 17 (a) Varick Bernstein, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Stewart moved to accept Varick Bernstein, M.D.'s application for licensure. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Anjum seconded the motion, and it passed unanimously.

17 (b) Denis Astarita, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Lubritz moved to table the agenda item until the board has had the opportunity to receive and review the outcome of the pending malpractice case against Dr. Astarita. Dr. Stewart seconded the motion and Dr. Hug-English took a roll call vote. Dr. Montoya, Dr. Anjum, Mrs. Kirch, Dr. Titus, and Dr. Baepler opposed the motion and the motion failed.

Dr. Montoya moved to accept Denis Astarita, M.D.'s application for licensure. Dr. Baepler seconded the motion and Dr. Hug-English took a roll call vote. Dr. Titus, Dr. Stewart, Dr. Jones, and Mrs. Kirch opposed the motion. The motion passed with the Chair voting in favor of the motion.

Dr. Jones moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed unanimously.

17 (c) Rajiv Budden, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Mrs. Kirch moved to deny Rajiv Budden, M.D.'s application for licensure due to his track record of three terminations from medical training programs, history of unprofessional behavior, leaving early from other medical training programs, being put on probation in one of his residency training programs, and inappropriate responses on his application for licensure. Dr. Baepler seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

17 (i) Martin O'Hara, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Montoya moved to accept Martin O'Hara, M.D.'s application for licensure. Dr. Lubritz seconded the motion and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Montoya moved to return to Closed Session for the same purposes stated before. Dr. Stewart seconded the motion, and it passed unanimously.

17 (d) Byron Carter, C.R.T. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Anjum moved to accept Byron Carter, C.R.T.'s application for licensure. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Jones moved to return to Closed Session for the same purposes stated before. Dr. Baepler seconded the motion, and it passed unanimously.

17 (e) Paul Gaulin, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Jones moved to accept Paul Gaulin, M.D.'s application for licensure. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler moved to return to Closed Session for the same purposes stated before. Dr. Anjum seconded the motion, and it passed unanimously.

17 (f) James Grieco, C.R.T. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Baepler moved to table James Grieco, C.R.T.'s application for licensure until the board receives advice from the board's Practitioner of Respiratory Care Advisory Committee as to how Mr. Grieco should be required to pass to prove his competency after having been away from the practice of respiratory care for 12 months. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Jones moved to return to Closed Session for the same purposes stated before. Dr. Montoya seconded the motion, and it passed unanimously.

17 (g) Patricia Hess, R.R.T. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Stewart moved to accept Patricia Hess, R.R.T.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Montoya moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

17 (h) Bruce Jones, R.R.T. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Jones moved to table Bruce Jones, R.R.T.'s application for licensure until the board receives advice from the board's Practitioners of Respiratory Care Advisory Committee as to how Mr. Jones should be required to pass to prove his competency after having been away from the practice of respiratory care since 1982. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Jones moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed unanimously.

17 (j) Charles Quilty, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Baepler moved to accept Charles Quilty, M.D.'s application for licensure. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Montoya moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

17 (k) Eleanor Stanley, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Montoya moved to accept Eleanor Stanley, M.D.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

17 (l) John Rule, M.D. - Acceptance of Application for Licensure

Upon returning to Open Session, Dr. Lubritz moved to accept John Rule, M.D.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

AGENDA ITEM 18

Ratification of Licenses Issued , and Reinstatements of Licensure and Changes of Licensure Status Approved Since the December 6 & 7, 2002 Board Meeting

Dr. Baepler moved to ratify the licenses issued, and reinstatements of licensure and changes of licensure status approved since the December 6 & 7, 2002 board meeting. Dr. Stewart seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

AGENDA ITEM 19

Matters for Future Agenda

Dr. Montoya suggested that the information offered on the board's website be discussed at a future meeting.

AGENDA ITEM 15

Public Comment

There was no public comment.

ADJOURNMENT

Dr. Hug-English adjourned the meeting at 1:35 p.m.